

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|---------------------------|---|-----------------------------|
| RONALD G. JOHNSON, |) | |
| |) | |
| Petitioner, |) | Civil Action No. 05-258-KAJ |
| |) | |
| v. |) | |
| |) | |
| RAPHAEL WILLIAMS, Warden, |) | |
| |) | |
| Respondent. |) | |

O R D E R

On May 2, 2005, Petitioner Ronald G. Johnson filed in this Court a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. (D.I. 2.) The Court issued an Order informing him that the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244, applies to his petition and attached an AEDPA Election Form informing him of four options for proceeding with his habeas proceeding. (D.I. 5.) On June 1, 2005, Petitioner filed his AEDPA Election Form indicating that he wished to withdraw his § 2241 petition without prejudice. (D.I. 7.) Also on June 1, 2005, Petitioner filed a "Motion to Strike Previous Filing" stating he wished to file a new habeas petition and asking the Court to attach Exhibit A from his initial § 2241 Petition to his new § 2241 Petition. (D.I. 8.) Thereafter, on June 7, 2005, Petitioner filed an Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. (D.I. 9.) When these filings are viewed together, it appears that

Petitioner wishes to amend his initial petition with the amended petition provided, not withdraw his initial petition without prejudice.

THEREFORE, at Wilmington this 16th day of June, 2005, the § 2241 petition and amended § 2241 petition of Ronald G. Johnson for a Writ of Habeas Corpus having been reviewed pursuant to Rule 4, 28 U.S.C. foll. § 2254, IT IS ORDERED that:

1. The Court construes the Petitioner's AEDPA Election Form filed on June 1, 2005 as a request for leave to amend his § 2241 petition filed on May 2, 2005 rather than as a request to withdraw his § 2241 petition without prejudice. (D.I. 7.)

2. Petitioner's motions for leave to amend his § 2241 petition are GRANTED. (D.I. 7; D.I. 8.) The Court will review the amended § 2241 petition filed by Petitioner, along with Exhibit A from his original § 2241 petition. (D.I. 9.)

3. Pursuant to Rules 3(b) and 4, 28 U.S.C. foll. § 2254, the clerk shall forthwith serve by certified mail a copy of the amended petition, (D.I. 9.), Exhibit A from Petitioner's original § 2241 petition, (D.I. 2.), the AEDPA election form, (D.I. 7), the motion for leave to file an amended petition, (D.I. 8), the motion for status, amendment, and to dismiss, (D.I. 10), and this order upon: (1) the above-named Warden of the facility in which petitioner is housed; and (2) the Attorney General of the State of Delaware.

4. Within **forty-five (45) days of service** of the petition and

this order, in accordance with Rule 5, 28 U.S.C. foll. § 2254, respondents shall:

a. State whether the petitioner has exhausted his state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the State and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceeding;

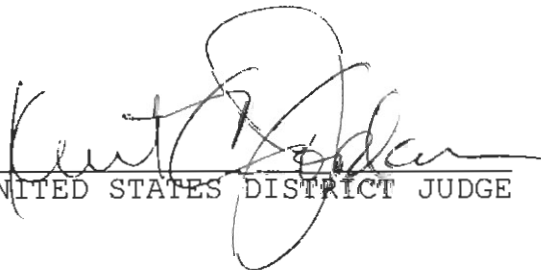
b. State whether any claim in the petition is barred by a procedural bar, non-retroactivity, or the statute of limitations;

c. Respond to the allegations of the petition;

d. Indicate what transcripts (of pretrial, trial, sentencing, and post-conviction proceedings) are available, when they can be furnished, and also what proceedings have been recorded and not transcribed;

e. Attach to the answer certified copies of such portions of the transcripts as may be material to the questions raised in the petition, as well as certified copies of the petitioner's brief(s) on appeal (direct and/or post-conviction) and of the opinion(s) of the appellate court, if any.

5. The clerk shall mail a copy of this order forthwith to the petitioner.


UNITED STATES DISTRICT JUDGE